

**ORIGINAL**

Commenter: Cox  
 Applicant: SBC  
 State: OK

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

**RECEIVED**

In the Matter of

JAN - 8 2001

Application of SBC Communications, Inc. )  
 Pursuant to Section 271 of the )  
 Telecommunications Act of 1996 )  
 To Provide In-Region, InterLATA Services )  
 in Kansas and Oklahoma )

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

CC Docket No. 00-217

**COMMENTS OF COX COMMUNICATIONS, INC.  
 IN OPPOSITION TO THE SUPPLEMENT  
 SUBMITTED BY SBC COMMUNICATIONS, INC.**

In accordance with the Public Notice, DA 00-2912, released December 27, 2000, Cox Communications, Inc. ("Cox") submits these Comments in opposition to the supplement to the application filed in the above-referenced proceeding. On December 27, 2000, SBC Communications, Inc. ("SBC") filed a supplement ("Supplement") to the application it had filed on October 26, 2000 ("Application"), seeking authority to furnish in-region, interLATA services in Kansas and Oklahoma. For the reasons stated in Cox's November 15<sup>th</sup> comments in this docket,<sup>1</sup> Cox opposed the FCC's grant of the Application. Notwithstanding SBC's eleventh-hour attempt to rehabilitate the deficiencies in the Application by submitting the Supplement, Cox continues to oppose such a grant for the reasons explained herein.

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<sup>1</sup> Rather than repeat the contents of its own previous pleading here, Cox incorporates them by reference.

## **I. THE DOJ EVALUATION**

The United States Department of Justice (“DOJ”) submitted an evaluation (“Evaluation”) in this docket on ~~June~~ 4, 2000. The DOJ concluded that the small numbers of unbundled network element platform (“UNE-P”) lines and of facilities-based residential lines served by competitive local exchange carriers (“CLECs”) in Oklahoma are insufficient to show that the Oklahoma market is fully open to these modes of entry and to competition for business and residential customers.<sup>2</sup> As a result, DOJ urges the FCC to conduct a hearing to determine generally whether SBC has fully and irreversibly opened the Oklahoma market to all three modes of competition: (1) interconnection; (2) resale; and (3) unbundled network elements (“UNEs”). Specifically, DOJ would have the FCC inquire into (1) the cost justification of interconnection and UNEs, (2) whether SBC’s offering of interconnection and UNEs meets reasonable levels of performance, and (3) if SBC’s support systems and procedures in Oklahoma are similar enough to those in Texas to ensure that they will perform adequately. While Cox encourages the FCC to deny the supplemented Application, Cox supports DOJ’s recommendation for a hearing into these issues if the FCC elects not to take this action.

## **II. THE SUPPLEMENT**

The Supplement offers to discount certain recurring and non-recurring rates applicable to Oklahoma “as a compromise to allay these concerns,” referring to the objections of DOJ and some commenters in this docket who believe that Oklahoma

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<sup>2</sup> Evaluation, pp. 9 & 10.

prices are too high, especially when compared to Texas rates.<sup>3</sup> SBC further alleges that the Oklahoma rates that are being discounted are cost-based.<sup>4</sup> Cox disagrees. These rates were not cost-based before giving effect to the proposed discount and will not become cost-based simply by virtue of applying discounts. Unlike the rates adopted in Texas, these Oklahoma rates were never adopted in a regulatory proceeding that considered a cost study supporting them.

These rates were approved by the Corporation Commission of the State of Oklahoma (“Oklahoma Commission”) in Cause No. PUD 990000613,<sup>5</sup> which dealt with SBC’s request for alternative regulation. The Oklahoma Commission approved them based on a stipulation that made it clear that they were not intended to be cost-based.<sup>6</sup> These rates are thus highly subjective since they were adopted to avoid the rigors of an objective cost case that would have complied with the Act.

As DOJ points out,<sup>7</sup> the FCC should not assume that rates adopted by a state commission are cost-justified. Cox agrees with DOJ’s conclusion that Oklahoma’s permanent rates do not appear to be cost-based.<sup>8</sup> Moreover, the Supplement does not

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<sup>3</sup> Supplement, pp. 1 & 2.

<sup>4</sup> *Id.*

<sup>5</sup> Order No. 437259, filed December 10, 1999.

<sup>6</sup> Paragraph 9 of the stipulation states: “Signing this Stipulation does not constitute an admission by any party that UNE rates are or are not cost-based or that SWBT has or has not complied with Section 271 of the Federal Telecommunications Act of 1996. Parties are not prohibited from taking any position regarding UNE rates in a proceeding pursuant to Section 271 of the Federal Telecommunications Act of 1996.”

<sup>7</sup> Evaluation, p. 11.

<sup>8</sup> Evaluation, p. 14.

propose to make these discounts available to all carriers; rather, they would be provided only to carriers who adopt a revised Oklahoma 271 agreement ("O2A").<sup>9</sup> Even if the O2A represented a reasonable contract between SBC and an electing CLEC--an issue which is very much in doubt--this offering would be discriminatory because the reduced rates would not be available to all carriers, including those with current agreements in place and those who are now negotiating unique agreements.

Finally, apart from being procedurally suspect, the practice of supplementing applications raises substantive issues which, in this instance, mitigates against the FCC's grant of the supplemented Application. The very fact that SBC is now offering these eleventh-hour changes in a further effort to satisfy the Competitive Checklist furnishes evidence that SBC has not satisfied those requirements to date. It bears noting that the Competitive Checklist cannot be satisfied prospectively through promises but must be met through past practices which demonstrate that SBC is providing interconnection and access in a manner that has resulted in a local exchange market that is presently open. This is what Congress intended through the enactment of Section 271(c)(2)(B), not that SBC may discount some of its rates to certain carriers until they are assumed to be almost cost-justified.

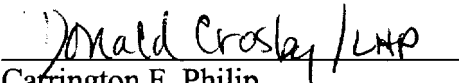
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<sup>9</sup> In Order No. 445180, filed September 28, 2000, the Oklahoma Commission held in Cause No. PUD 970000560 that SBC had satisfied the requirements of Section 271, subject to its modifying O2A as directed, and that its entry into the long distance market in Oklahoma would be in the public interest.

### III. CONCLUSION

Not only does the Supplement fail to rehabilitate the Application by finally providing cost-based UNE rates, it constitutes the tacit admission by SBC that the UNE rates supported by the Application were not cost-based. Since the original UNE rates supported by the Application are not cost-based, it is impossible for SBC to argue successfully that the mere artifice of discounting those rates for certain companies magically transforms them into cost-based rates. Based on the remaining fatal defects in the supplemented Application, Cox urges the FCC to deny the supplemented Application. In the absence of such a denial, Cox supports DOJ's recommendation that the FCC conduct an evidentiary hearing into whether the Application should be granted.

Respectfully submitted,

  
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January 8, 2001

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Cox Communications, Inc. was sent to each of the following parties by first class mail and via hand delivery as indicated by the \* on this 8th day of January, 2001.

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